

EXHIBIT A



05-CV-02035-EXH

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9 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
10 **IN AND FOR THE COUNTY OF KING**

11 **JOEL HODGELL,**

12 **Plaintiff,**

13 **v.**

14 **YVES ROCHER NORTH AMERICA**
15 **(a foreign corporation),**
16 **YVES ROCHER (U.S.A.) INC.,**
17 **(a Delaware corporation),**
18 **YVESROCHERUSA.COM,**
19 **and JOHN DOES 1-20,**

20 **Defendants.**

NO.

**COMPLAINT FOR INJUNCTIVE
AND ADDITIONAL RELIEF
UNDER THE UNFAIR BUSINESS
PRACTICES--CONSUMER
PROTECTION ACT, THE
COMMERCIAL ELECTRONIC
MAIL ACT, AND THE IDENTITY
CRIMES ACT, ETC.**

21 **COMES NOW**, plaintiff, Joel Hodgell, through his attorney Robert J. Siegel, brings this
22 amended action against defendants named herein. The plaintiff alleges the following on
23 information and belief:

24 **I. JURISDICTION AND VENUE**

25 **1.1.** This is an action to recover damages and penalties for defendants' repeated
violations of the Washington State Commercial Electronic Mail Act (CEMA), RCW 19.190 et

COMPLAINT FOR DAMAGES/PENALTIES, ETC. -1
HODGELL v. YVES ROCHER, ET AL

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1 seq., the Identity Crimes Act, RCW 9.35, the Washington State Consumer Protection Act (CPA),
2 RCW 19.86 et seq., and under the common law tort of nuisance, harassment and theft of
3 (diminution of) services.

4 1.2. This Complaint is filed and these proceedings are instituted under the provisions
5 of RCW 19.190, the Commercial Electronic Mail Act (CEMA), RCW 9.35 the Identity Crimes
6 Act, and RCW 19.86, the Unfair Business Practices--Consumer Protection Act (CPA), and under
7 common law tort of nuisance, harassment, and theft of (diminution of) services.

8 1.3. Jurisdiction of the plaintiff to commence this action is conferred by RCW
9 19.86.080, 19.86.090, 19.86.160, RCW 19.190.030, RCW 9.35.020(5), and RCW 4.12.020-.025.

10 1.4. The violations alleged herein have been and are being committed in whole or in
11 part in King County, in the state of Washington by defendants named herein, therefore, pursuant
12 to RCW 4.12.020-.025 and RCW 9.35.020(5), venue is proper in this court.

13 II. PLAINTIFF & DEFENDANTS

14 2.1. Plaintiff, Joel Hodgell, is a resident of the state of Washington and of the county
15 of King, and is an adult over the age of eighteen years.

16 2.2. Defendant Yves Rocher North America appears to be a foreign corporation that
17 transacts business throughout the United States and at their <http://www.yvesrocherusa.com>
18 website. Defendant Yves Rocher (U.S.A.) Inc. appears to be a Delaware corporation

19 2.3. Defendants appear to conduct business in Washington through unsolicited bulk
20 commercial email messages (AKA "spam") sent over the internet to Washington residents, to
21 promote their commercial websites, by themselves and/or by and through JOHN DOES 1-20.
22 Defendants also appear to have initiated, and/or assisted, and/or conspired with others to initiate
23 the transmission of spam. Plaintiff is unaware of the true names and capacities of defendants
24 sued herein as JOHN DOES 1-20, inclusive, and therefore sues these defendants by such
25 fictitious names. Plaintiff will amend this complaint to allege their true names and capacities

COMPLAINT FOR DAMAGES/PENALTIES, ETC. -2
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1 when ascertained. Plaintiff is informed and believes and therefore alleges that each of the
2 defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's
3 injuries as herein alleged were proximately caused by such defendants. These fictitiously named
4 defendants, along with Yves Rocher North America, Yves Rocher (U.S.A.) Inc. and
5 YVESROCHERUSA.COM, are herein referred to as "defendants."

6 2.4. The actions alleged herein to have been undertaken by the defendants were
7 undertaken by each defendant individually, were actions that each defendant caused to occur,
8 were actions that each defendant authorized, controlled, directed, or had the ability to authorize,
9 control or direct, and/or were actions each defendant assisted, participated in, or otherwise
10 encouraged, and are actions for which defendant is liable. Each defendant aided and abetted the
11 actions of the defendants set forth below, in that each defendant had knowledge of those actions,
12 provided assistance and benefited from those actions, in whole or in part. Each of the defendants
13 was the agent of each of the remaining defendants, and in doing the things hereinafter alleged,
14 was acting with the course and scope of such agency and with the permission and consent of
15 other defendants.

15 III. NATURE OF TRADE OR COMMERCE

16 3.1. Defendants appear to have sent, and/or assisted, and/or initiated and conspired
17 with others to initiate the transmission of unsolicited commercial electronic mail messages
18 ("spam") via the internet to the plaintiff and other residents of Washington State.

19 3.2. Said messages were not "an electronic mail message to which an interactive
20 computer service provider has attached an advertisement in exchange for free use of an
21 electronic mail account, when the sender has agreed to such an arrangement" (RCW
22 19.190.010(2)).

23 3.3. Defendants know or have reason to know that they send spam to Washington
24 State residents. All of the plaintiff's email addresses that were spammed by the defendants are

1 registered at <http://registry.waisp.org> and/or with the Direct Marketing Association's e-Mail
2 Preference Service. The plaintiff's residency status information for his email addresses was
3 available upon request from the registrant of the internet domain names found in his email
4 addresses, and was also directly available from the plaintiff.

5 3.4. Defendants are in competition with others in the state of Washington engaged in
6 similar business.

7 **IV. FIRST CAUSE OF ACTION - VIOLATIONS OF RCW 19.190 (CEMA)**

8 4.1. Plaintiff realleges Paragraphs 1.1 through 3.4 and incorporates them herein as if
9 set forth in full.

10 4.2. Email messages sent via the internet contain a header, which tells the recipient the
11 source (point of origin) of the original message, as well as any points of transmission on the
12 message's path to the eventual recipient. A typical header will show the path of computers that
13 sent the email message to the ultimate recipient. The specific computers are identified by a
14 series of computer and domain names, and internet protocol numbers. Often there are several
15 computers involved in transmitting the message to its final destination. By examining the names
16 and numbers which identify each computer along the transmission path, it is possible to
17 determine who originally sent the message, and which internet service providers transmitted it to
18 its ultimate recipient.

19 4.3. The defendants obscured and misrepresented the identifying information for the
20 point of origin of their spams by using obscured generic names in the "from" and/or "sender"
21 field that first appears in the email recipient's inbox, and by using bogus, obscured, invalid, non-
22 working "from:" email addresses in order to obscure and misrepresent the fact that their spams
23 were from the defendants and were not personal communications.
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1 The "from" or "sender" field, and the "subject" line, are both seen first by email
2 recipients when they open their inbox for their email address account. Email recipients rely on
3 the information found in the "from" or "sender" field and "subject" line in order to determine
4 who sent each email to them, and to determine if each email is for personal or business uses, or is
5 spam. The defendants have obscured and misrepresented the "from" fields and "from:" email
6 addresses (which help to identify its point of origin) of their spams in order to make their spams
7 appear to be personal emails, so the recipients will open/download and read their spams.

8 Washington State law requires that a sender of commercial electronic mail to truthfully
9 identify the point of origin of their email(s), RCW 19.190.020(1)(a). By obscuring and
10 misrepresenting the information that appears in the "from" or "sender" field that is seen in the
11 email recipient's inbox, and the "from:" email addresses, defendants obscured and
12 misrepresented the point of origin of their emails and thus violated the CEMA.

13 4.4. The defendants also used third party internet domain names YAHOO.COM and
14 HOTMAIL.COM in the "to:" field (which is part of the transmission path) in the identifying
15 information of the transmission path in their email headers. YAHOO.COM and
16 HOTMAIL.COM are supported, at least in part, by paid advertisements, and not by the unpaid,
17 unrequested, unpermitted, and misleading commercial email messages from the defendants.
18 Clearly, this is an unfair method of competition and unfair or deceptive act or practice in the
19 conduct of any trade or commerce, and has been declared unlawful by the Washington State
20 legislature, as used by the defendants.

21 4.5. The defendants may have used subject lines that contained false and misleading
22 information in their spams and these spams violate RCW 19.190.020(1)(b) and RCW
23 19.190.030(1)(b).

24 4.6. It is a violation of RCW 19.190.020(1)(a)(b) and 19.190.030(1)(a)(b) to initiate
25 the transmission, conspire with another to initiate the transmission, or assist the transmission, of

1 a commercial electronic mail message from a computer located in Washington or to an electronic
2 mail address that the sender knows, or has reason to know, is held by a Washington resident that
3 uses a third party's internet domain name without permission of the third party, or otherwise
4 misrepresents or obscures any information in identifying the point of origin or the transmission
5 path of a commercial electronic mail message, or contains false or misleading information in the
6 subject line. Pursuant to RCW 19.190.020(1)(a)(b), each email sent in this First Cause of Action
7 is a separate and distinct violation of RCW 19.190, and pursuant to RCW 19.190.030(1)(a)(b),
8 (2), and (3) constitutes a separate and distinct violation of the Consumer Protection Act, RCW
9 19.86. As a proximate result of defendants' conduct, each and every email sent in this First
10 Cause of Action has damaged plaintiff in his property.

11 **V. SECOND CAUSE OF ACTION – VIOLATIONS OF RCW 9.35 IDENTITY CRIMES**

12 5.1. Plaintiff realleges Paragraphs 1.1 through 4.6 and incorporates them herein as if
13 set forth in full.

14 5.2. Defendants improperly possessed plaintiff's personal means of identification
15 information (RCW 9.35.005(3), in their pursuit of unlawful activities (RCW 9.35.005(5)).

16 5.3. Defendants falsely used the plaintiff's means of identification (RCW 9.35.020(3))
17 to gain business from their clients, for the defendants' own financial gain.

18 5.4. The legislature finds that the practices covered by 9.35.020 are matters vitally
19 affecting the public interest (RCW 9.35.800) for the purpose of applying the Consumer
20 Protection Act, chapter 19.86 RCW. Violations of 9.35.020 are not reasonable in relation to the
21 development and preservation of business. A violation of RCW 9.35.020 is an unfair or
22 deceptive act in trade or commerce and an unfair method of competition for the purpose of
23 applying the Consumer Protection Act, chapter 19.86 RCW.

24 **VI. THIRD CAUSE OF ACTION – VIOLATIONS OF RCW 19.86 (CPA)**

1 6.1. Plaintiff realleges Paragraphs 1.1 through 5.4 and incorporates them herein as if
2 set forth in full.

3 6.2. In addition to the related CPA violations found in the First Cause, each email sent
4 by the defendants falsely claiming (directly or indirectly) the plaintiff "subscribed" or "opted-in"
5 (directly or indirectly) to receive their spams, also constitutes a separate and distinct act of an
6 unfair method of competition and unfair or deceptive act or practice in the conduct of any trade
7 or commerce, has been declared unlawful, and violates RCW 19.86 (RCW 19.86.020, et seq.),
8 the Washington Consumer Protection Act. As a proximate result of defendants' conduct, each
9 and every Count in this Second Cause of Action has damaged plaintiff in the use of his internet
10 access and usage of his email accounts.

11 **VII. FOURTH CAUSE OF ACTION – COMMON LAW TORTS OF NUISANCE.**

12 **HARASSMENT AND THEFT OF (DIMINUTION OF) SERVICES**

13 7.1. Plaintiff realleges Paragraphs 1.1 through 6.2 and incorporates them herein as if
14 set forth in full.

15 7.2. Each email sent by defendants also constitutes a separate and distinct act of
16 nuisance, harassment and theft of (diminution of) services, causing loss of time, and other losses.

17 7.3. As a proximate result of defendants' conduct in each and every Count in the First,
18 Second, Third and Fourth Causes of Action, plaintiff has experienced loss of use, loss of value,
19 and additional work and expenses relating to the Internet service he uses and pays for.

20 **VIII. PRAYER FOR RELIEF**

21 **WHEREFORE**, plaintiff, **JOEL HODGELL**, prays for relief as follows:

22 8.1. That the Court adjudge and decree that Defendants have engaged in the conduct
23 complained of herein;

24 8.2. That the Court adjudge and decree that the conduct complained of herein constitutes
25 violations of the Commercial Electronic Mail Act, RCW 19.190, and pursuant to RCW

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1 19.190.030(2) and (3) constitutes separate and distinct violations of the Consumer Protection Act,
2 RCW 19.86;

3 8.3. That the Court adjudge and decree that the conduct complained of herein constitutes
4 violations of the Identity Crimes Act, RCW 9.35, and pursuant to RCW 9.35.800 constitutes
5 separate and distinct violations of the Consumer Protection Act, RCW 19.86;

6 8.4. That the Court adjudge and decree that the conduct complained of herein constitutes
7 an unfair method of competition and unfair or deceptive act or practice in the conduct of any
8 trade or commerce in violation of the Consumer Protection Act, RCW 19.86;

9 8.5. That the Court adjudge and decree that the conduct complained of herein constitutes
10 acts of nuisance, harassment, and theft of (diminution of) services;

11 8.6. That the Court issue a permanent injunction enjoining and restraining defendants
12 and their representatives, successors, assigns, officers, agents, servants, employees, and all other
13 persons acting or claiming to act for, on behalf of, or in active concert or participation with
14 defendants from continuing or engaging in the unlawful conduct complained of herein;

15 8.7. That for the First Cause of Action the Court assess statutory damages of
16 USD\$500.00 for each and every, separate and distinct violation of RCW 19.190 (RCW
17 19.190.040(1);

18 8.8. That for the Second Cause of Action the Court assess statutory damages of
19 USD\$1000.00 (RCW 9.35.020(4)) for each and every, separate and distinct violation of RCW
20 9.35.020.

21 8.9. That for the Third Cause of Action the Court assess civil penalties pursuant to RCW
22 19.86.140, of two thousand dollars (USD\$2,000) for each and every, separate and distinct violation
23 of RCW 19.86.020 caused by the conduct complained of herein;
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1 8.10. That for the Fourth Cause of Action, for each email sent, the Court assess an award
2 of damages for nuisance, harassment, and theft of (diminution of) services in an amount to be set at
3 trial;

4 8.11. That for the First, Second, Third and Fourth Causes of Action the Court assess treble
5 damages and costs pursuant to RCW 19.86.090 for each and every separate and distinct violation
6 of RCW 19.86.020;

7 8.12. That Defendants pay all of Plaintiff's legal, filing and service fees;

8 8.13. That Defendants pay Plaintiff any additional costs and fees associated with the
9 enforcement of judgment rendered herein, with post-judgment annual compound interest of 12%;

10 8.14. That the Court decree such orders pursuant to RCW 19.86.080 to provide that
11 Plaintiff have and recover from Defendants the costs of this action, including reasonable attorney's
12 fees; and

13 8.15. That the Court order such other relief as it may deem just and proper to fully and
14 effectively dissipate the effects of the conduct complained of herein, or which may otherwise seem
15 proper to the Court.

16 DATED this 26th day of October, 2005.

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19
20 Robert J. Siegel, WSBA #17312
21 Attorney for Plaintiff